UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CENTURY SURETY COMPANY,

Plaintiff,

vs.

PINNACLE RESTORATION CORP., COLUMBUS 95TH ST., LLC, XUNCAS RESTORATION CORP. and MARIO GALVEZ,

Defendants.

COMPLAINT

Civil Action No.:

Plaintiff, CENTURY SURETY COMPANY ("CENTURY"), by and through its attorneys, HURWITZ & FINE, P.C., as and for its Complaint herein, alleges, upon information and belief, as follows:

1. At all times hereinafter mentioned, Plaintiff, CENTURY SURETY COMPANY ("CENTURY"), was and still is incorporated in the State of Ohio with its principal place of business in the State of Michigan, and issues insurance policies under the laws of the State of New York.

2. Upon information and belief, now and at all times hereinafter mentioned, Defendant, PINNACLE RESTORATION CORP. ("PINNACLE"), was and still is an incorporated business entity domiciled in the State of New York with its principal place of business located at 70-05 73rd Place, Glendale, New York. Upon information and belief, now and at all times hereinafter mentioned, Defendant, COLUMBUS 95TH ST., LLC ("COLUMBUS"), was and still is an incorporated business entity domiciled in the State of New York with its principal place of business located at 130 East 59th St., New York, New York.

3. Upon information and belief, now and at all times hereinafter mentioned,

Defendant, XUNCAS RESTORATION CORP. ("XUNCAS"), was and still is an incorporated business entity authorized to conduct business in the State of New York with its principal place of business located at 160 Lafayette Street, Newark, New Jersey.

4. Upon information and belief, now and at all times hereinafter mentioned, Defendant, MARIO GALVEZ ("GALVEZ"), was and is resident of Bronx, New York.

5. The amount in controversy exclusive of interest and costs exceeds Seventy Five Thousand and 00/100 Dollars ($75,000.00).

6. The District Court has original jurisdiction over this action pursuant to 28 U.S.C. Section 1332(a)(1), based upon the parties' diversity of citizenship and its monetary threshold.

THE UNDERLYING INCIDENT AND LAWSUIT

7. Upon information and belief, COLUMBUS owned property located at 95 West 95th Street, New York, New York ("the premises").

8. Upon information and belief, COLUMBUS entered into an agreement with PINNACLE by which PINNACLE was to perform certain construction work at the premises.

9. Upon information and belief, PINNACLE entered into an agreement with XUNCAS by which XUNCAS was to perform certain construction work at the premises.

10. Upon information and belief, on or about September 26, 2012, GALVEZ was performing certain construction work at the premises when he injured his back (the "incident").

11. On or about December 26, 2012, GALVEZ commenced an action in Supreme Court, Bronx County captioned *Mario Galvez v. Columbus 95th St.*, et. al. under Index No. 300059/2013 ("the Underlying Action").

12. The complaint in the Underlying Action claimed that COLUMBUS owned the premises at the time of the incident, and that PINNACLE served as general contractor for

construction work at the premises.

13. GALVEZ averred in the Underlying Action that he was an employee of PINNACLE at the time of the incident.

14. The Workers' Compensation Board, however, found that GALVEZ was an employee of XUNCAS at the time of the incident, but that since XUNCAS did not carry Workers' Compensation Insurance, ruled that PINNACLE was responsible for paying GALVEZ Workers' Compensation benefits.

15. GALVEZ averred in a motion for summary judgment in the Underlying Action that he was an employee of XUNCAS at the time of the incident, and that he was injured in the course of his employment with XUNCAS.

16. The Court in the Underlying Action made a factual finding in deciding the motions for summary judgment in the Underlying Action that GALVEZ was an employee of XUNCAS at the time of the accident.

17. Upon information and belief, the claims against PINNACLE were dismissed on summary judgment in the Underlying Action.

18. The time for GALVEZ to appeal the dismissal has not yet expired.

CENTURY'S POLICY ISSUED TO PINNACLE

19. CENTURY issued an insurance policy to PINNACLE, Policy No. CCP743045 (the "PINNACLE Policy"), for the policy period of December 14, 2011 to December 14, 2012. The PINNACLE Policy contains the following grant of coverage:

> **COMMERCIAL GENERAL LIABILITY COVERAGE FORM**
>
> Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance.

The word "insured" means any person or organization qualifying as such under Section **II** – Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section **V** – Definitions.

SECTION I – COVERAGES

COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

(1) The amount we will pay for damages is limited as described in Section **III** – Limits Of Insurance; and

(2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages **A** or **B** or medical expenses under Coverage **C.**

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages **A** and **B**

* * *

20. The PINNACLE Policy sets forth certain exclusions from coverage:

2. Exclusions

This insurance does not apply to:

* * *

d. Workers' Compensation and Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

e. Employer's Liability

"Bodily injury" to:

(1) An "employee" of the insured arising out of and in the course of:

(a) Employment by the insured; or

(b) Performing duties related to the conduct of the insured's business; or

(2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph **(1)** above.

This exclusion applies whether the insured may be liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

21. The PINNACLE Policy contains the following Action Over Exclusion, which amends the Employer's Liability Exclusion:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ACTION OVER EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

It is agreed that the following change is made to Coverage A. 2. Exclusions:

Exclusion e. Employer's Liability is deleted in its entirety and replaced with the following:
Employer's Liability

"Bodily injury" to:

(1) An "employee" of the named insured arising out of and in the course of:
   (a) Employment by the named insured; or
   (b) Performing duties related to the conduct of the named insured's business; or
(2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.

This exclusion applies:

(1) Whether the insured may be liable as an employer or in any other capacity and
(2) To any obligation to share damages with or replay someone else who must pay damages.

22. The PINNACLE Policy also contains a Workers Compensation Exclusion, Endorsement CGL 0117 (0910) which provides, in pertinent part:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.
EXCLUSION - WORKERS COMPENSATION
This endorsement modifies insurance provided under the following:
COMMERCIAL GENERAL LIABILITY COVERAGE FORM
Section I - Coverages, Coverage A Bodily Injury and Property Damage Liability, paragraph 2., Exclusions, item d. Workers' Compensation And Similar Laws is deleted in its entirety and replaced with the following:

d. Workers Compensation and Similar Laws
This insurance does not apply to any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any other similar law

> This exclusion also applies to any obligation of the insured under the workers' compensation statutes of any state arising out of the failure of the insured to exact from a contractor (or subcontractor if the insured is a contractor) a certificate from the workers' compensation board showing that the contractor (or subcontractor) has complied with the applicable workers' compensation insurance requirements.
>
> All other terms and conditions of this policy remain unchanged.

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23. The PINNACLE Policy also contains an Independent Contractors Exclusion, Endorsement CGL 1710 (0311), which provides, in pertinent part:

> **THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY. EXCLUSION - BODILY INJURY TO INDEPENDENT CONTRACTORS**
>
> This endorsement modifies insurance provided under the following: COMMERCIAL GENERAL LIABILITY COVERAGE PART
>
> The following exclusion is added to Section I - Coverages, Coverage A, Bodily Injury and Property Damage Liability, paragraph 2., Exclusions:
>
> This insurance does not apply to:
> Independent Contractors "Bodily injury" to
>
> (1) Any independent contractor or the "employee" of any independent contractor while such independent contractor or their "employee" is working on behalf of any insured;
>
> or
>
> (2) The spouse, child, parent, brother or sister of such independent contractor or "employee" of the independent contractor as a consequence of (1) above.
>
> This exclusion applies:
>
> (1) Whether the insured may be liable as an employer or in any other capacity; and

(2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

All other terms and conditions of this policy remain unchanged.

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24. The PINNACLE Policy contains the following Contractors Amendatory Endorsement:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.CONTRACTORS AMENDATORY ENDORSEMENT

This endorsement modifies insurance provided under the following:
COMMERCIAL GENERAL LIABILITY COVERAGE PART
In consideration of the premium charged the following changes are made to this policy:
A. It is agreed that **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS** is changed as follows:

1. Item **4. Other Insurance** is deleted and entirely replaced by the following:
Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages A or B of this Coverage Part, our obligations are limited as follows:

a. This insurance is excess over any other insurance whether the other insurance is stated to be primary, pro rata, contributory, excess, contingent, umbrella, or on any other basis; unless the other insurance is issued to the named insured shown in the Declarations of this Coverage Part and is written explicitly to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

b. When this insurance is excess, we will have no duty under Coverage A or B to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

> **c.** When this insurance is excess over other insurance, we will pay only our share of the amount of loss, if any, that exceeds the sum of:
> (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
> (2) The total of all deductible and self-insured amounts under all that other insurance.
>
> ***

25. The PINNACLE Policy contains the following amended definitions:

> The following definitions are deleted and entirely replaced:
> **1.** Item **5.** "Employee" is deleted in its entirety and replaced by the following:
> "Employee" includes a "leased worker", a "temporary worker" and a "volunteer worker".
>
> ***

26. Form CG 2033 0704 in the PINNACLE POLICY, Additional Insured - Owners, Lessees or Contractors Automatic Status When Required in Construction Agreement With You, states as follows:

> **ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - AUTOMATIC STATUS WHEN REQUIRED IN CONSTRUCTION AGREEMENT WITH YOU**
> This endorsement modifies insurance provided under the following:
> COMMERCIAL GENERAL LIABILITY COVERAGE PART
>
> A. Section II - Who Is An Insured is amended to include as an additional insured any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy. Such person or organization is an additional insured only with respect to liability for 'bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured.

A person's or organization's status as an additional insured under this endorsement ends when your operations for that additional insured are completed.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

1. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural', engineering or surveying services, including:

   a. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or

   b. Supervisory, inspection, architectural or engineering activities.

2. "Bodily injury" or "property damage" occurring after:

   a. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or

   b. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

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CENTURY'S POLICY ISSUED TO XUNCAS

27. CENTURY issued an insurance policy to XUNCAS, Policy No. CCP762700 (the "XUNCAS Policy"), for the policy period of April 14, 23012 to April 14, 2013. The XUNCAS Policy contains the following grant of coverage:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance.

The word "insured" means any person or organization qualifying as such under Section **II** – Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section **V** – Definitions.

SECTION I – COVERAGES

COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY

2. Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

(1) The amount we will pay for damages is limited as described in Section **III** – Limits Of Insurance; and

(2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages **A** or **B** or medical expenses under Coverage **C.**

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages **A** and **B**

* * *

28. The XUNCAS Policy sets forth certain exclusions from coverage:

2. Exclusions

This insurance does not apply to:

* * *

f. Workers Compensation and Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

g. Employer's Liability

"Bodily injury" to:

(1) An "employee" of the insured arising out of and in the course of:

(a) Employment by the insured; or

(b) Performing duties related to the conduct of the insured's business; or

(2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.

This exclusion applies whether the insured may be liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

29. The XUNCAS Policy contains the following Action Over Exclusion, which amends the Employer's Liability Exclusion:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ACTION OVER EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

It is agreed that the following change is made to Coverage A. 2. Exclusions:

Exclusion e. Employer's Liability is deleted in its entirety and replaced with the following:
Employer's Liability

"Bodily injury" to:

(1) An "employee" of the named insured arising out of and in the course of:
  (a) Employment by the named insured; or
  (b) Performing duties related to the conduct of the named insured's business; or
(2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.

This exclusion applies:

(1) Whether the insured may be liable as an employer or in any other capacity and

(2) To any obligation to share damages with or replay someone else who must pay damages.

30. The XUNCAS Policy also contains a Workers Compensation Exclusion, Endorsement CGL 0117 (0910) which provides, in pertinent part:

> **THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**
> **EXCLUSION - WORKERS COMPENSATION**
> This endorsement modifies insurance provided under the following:
> COMMERCIAL GENERAL LIABILITY COVERAGE FORM
> Section I - Coverages, Coverage A Bodily Injury and Property Damage Liability, paragraph 2., Exclusions, item d. Workers' Compensation And Similar Laws is deleted in its entirety and replaced with the following:
>
> d. Workers' Compensation and Similar Laws
> This insurance does not apply to any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any other similar law
>
> This exclusion also applies to any obligation of the insured under the workers' compensation statutes of any state arising out of the failure of the insured to exact from a contractor (or subcontractor if the insured is a contractor) a certificate from the workers' compensation board showing that the contractor (or subcontractor) has complied with the applicable workers' compensation insurance requirements.
>
> All other terms and conditions of this policy remain unchanged.

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31. The XUNCAS Policy also contains an Independent Contractors Exclusion, Endorsement CGL 1710 (0311), which provides, in pertinent part:

> **THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY. EXCLUSION - BODILY INJURY TO INDEPENDENT CONTRACTORS**

This endorsement modifies insurance provided under the following: COMMERCIAL GENERAL LIABILITY COVERAGE PART

The following exclusion is added to Section I - Coverages, Coverage A, Bodily Injury and Property Damage Liability, paragraph 2., Exclusions:

This insurance does not apply to:
Independent Contractors "Bodily injury" to

(1) Any independent contractor or the "employee" of any independent contractor while such independent contractor or their "employee" is working on behalf of any insured;

or

(2) The spouse, child, parent, brother or sister of such independent contractor or "employee" of the independent contractor as a consequence of (1) above.

This exclusion applies:

(1) Whether the insured may be liable as an employer or in any other capacity; and

(2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

All other terms and conditions of this policy remain unchanged.

***

32. The XUNCAS Policy contains the following Contractors Amendatory Endorsement:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.CONTRACTORS AMENDATORY ENDORSEMENT

This endorsement modifies insurance provided under the following:
COMMERCIAL GENERAL LIABILITY COVERAGE PART
In consideration of the premium charged the following changes are made to this policy:

A. It is agreed that **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS** is changed as follows:

1. Item **4. Other Insurance** is deleted and entirely replaced by the following:
Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages A or B of this Coverage Part, our obligations are limited as follows:

a. This insurance is excess over any other insurance whether the other insurance is stated to be primary, pro rata, contributory, excess, contingent, umbrella, or on any other basis; unless the other insurance is issued to the named insured shown in the Declarations of this Coverage Part and is written explicitly to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

b. When this insurance is excess, we will have no duty under Coverage A or B to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

c. When this insurance is excess over other insurance, we will pay only our share of the amount of loss, if any, that exceeds the sum of:
(1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
(2) The total of all deductible and self-insured amounts under all that other insurance.

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33. The XUNCAS Policy contains the following amended definitions:

The following definitions are deleted and entirely replaced:
1. Item **5.** "Employee" is deleted in its entirety and replaced by the following:
"Employee" includes a "leased worker", a "temporary worker" and a "volunteer worker".

***

34. Form CG 2010 0704 in the XUNCAS Policy Additional Insured - Owners, Lessees or Contractors - Scheduled Person or Organization Provides as follows:

> **ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - SCHEDULED PERSON OR ORGANIZATION**
> **Name Of Additional Insured Person(s)**
> **Or Organization(s):**
>
> Pinnacle Restoration LDT
> 70-09 73rd PL
> Glendale, NY 11385
>
> **A. Section II - Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by
> **1.** Your acts or omissions; or
> **2.** The acts or omissions of those acting on your behalf;
> in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.
>
> **B.** With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:
> This insurance does not apply to "bodily injury" or "property damage" occurring after:
> **1.** All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
> **2.** That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

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DENIALS BY CENTURY

35. PINNACLE sought coverage under the PINNACLE Policy for the claims asserted against it in the Underlying Action.

36. By letter dated September 15, 2013, CENTURY agreed to afford PINNACLE a courtesy defense against the Underlying Action subject to a partial disclaimer of coverage based on the provisions of the PINNACLE Policy and the allegations in the Underlying Action that GALVEZ was employed by PINNACLE and/or an employee of an Independent Contractor of PINNACLE until the issue of employment could be resolved in this declaratory judgment action or otherwise.

37. CENTURY further denied coverage for any claims or damages barred by the Workers' Compensation Exclusion; the Action Over Exclusion; and the Employers' Liability Exclusion.

38. COLUMBUS also sought coverage under the PINNACLE Policy for the claims asserted against it in the Underlying Action.

39. By letter dated March 19, 2014, CENTURY denied coverage to COLUMBUS because it does not qualify as an Insured or Additional Insured under the PINNACLE Policy.

40. XUNCAS sought coverage under the XUNCAS Policy for the claims asserted against it in the Underlying Action.

41. By letter dated October 7, 2013, CENTURY agreed to afford XUNCAS a courtesy defense against the Underlying Action subject to a partial disclaimer of coverage based on the provisions of the XUNCAS Policy and the allegations in the Underlying Action that GALVEZ was employed by XUNCAS until the issue of employment could be resolved in this declaratory judgment action or otherwise.

42. CENTURY further denied coverage to XUNCAS for any claims or damages barred by the Workers' Compensation Exclusion; the Action Over Exclusion; and the Employers' Liability Exclusion.

AS AND FOR A FIRST CAUSE OF ACTION
AGAINST PINNACLE COLUMBUS, AND XUNCAS

43. CENTURY repeats and realleges each and every allegation contained in paragraphs "1" through "43" as if more fully set forth herein.

44. Upon information and belief, GALVEZ was, at the time and place of the accident, an employee of PINNACLE working in the course of his employment or performing duties related to PINNACLE's business.

45. Accordingly, any claims for damages for "bodily injury," including the claims asserted in the Underlying Action, are excluded from coverage under the PINNACLE Policy and by virtue of the Employer's Liability Exclusion in the PINNACLE Policy.

AS AND FOR A SECOND CAUSE OF ACTION
AGAINST PINNACLE, COLUMBUS, AND XUNCAS

46. CENTURY repeats and realleges each and every allegation contained in paragraphs "1" through "46" as if more fully set forth herein.

47. Upon information and belief, GALVEZ was, at the time and place of the accident, an employee of XUNCAS working in the course of his employment or performing duties related to PINNACLE's and/or XUNCAS's business.

48. Accordingly, any claims for damages for "bodily injury," including the claims asserted in the Underlying Action, are excluded from coverage under the XUNCAS Policy and by virtue of the Employer's Liability Exclusion in the XUNCAS Policy.

AS AND FOR THIRD CAUSE OF ACTION
AGAINST PINNACLE, COLUMBUS AND ZUNCAS

49. CENTURY repeats and realleges each and every allegation contained in paragraphs "1" through "49" as if more fully set forth herein.

50. Upon information and belief, GALVEZ was, at the time and place of the accident, an employee of PINNACLE's subcontractor, XUNCAS, working in the course of his employment or performing duties related to PINNACLE's business.

51. Accordingly, any claims for damages for "bodily injury," including the claims asserted in the Underlying Action, are excluded from coverage under the PINNACLE Policy and the XUNCAS Policy by virtue of the Independent Contractors Exclusion in the PINNACLE Policy.

AS AND FOR A FOURTH CAUSE OF ACTION
AGAINST PINNACLE, COLUMBUS AND XUNCAS

52. CENTURY repeats and realleges each and every allegation contained in paragraphs "1" through "52" as if more fully set forth herein.

53. Upon information and belief, GALVEZ was, at the time and place of the accident, an employee of PINNACLE or an employee of PINNACLE's subcontractor, XUNCAS, working in the course of his employment or performing duties related to PINNACLE's business.

54. Upon information and belief, COLUMBUS asserted or may assert claims against PINNACLE in the Underlying Action for defense or indemnification.

55. Upon information and belief, COLUMBUS claims to be insured under the PINNACLE and/or the XUNCAS Policy.

56. Accordingly, any claims for damages for "bodily injury," including the between COLUMBUS and PINNACLE the Underlying Action, are excluded from coverage under the

CENTURY Policy by virtue of the Action Over Exclusion in the PINNACLE and the XUNCAS Policy.

AS AND FOR A FIFTH CAUSE OF ACTION
AGAINST PINNACLE, COLUMBUS AND XUNCAS

57. CENTURY repeats and realleges each and every allegation contained in paragraphs "1" through "57" as if more fully set forth herein.

58. Upon information and belief, PINNACLE is obligated to pay GALVEZ Workers' Compensation benefits as he was an employee of the company at the time of the accident.

59. Accordingly, any claims for damages for "bodily injury," including the claims asserted in the Underlying Action, are excluded from coverage under the PINNACLE Policy by virtue of the Workers' Compensation Exclusion.

AS AND FOR A SIXTH CAUSE OF ACTION
AGAINST PINNACLE, COLUMBUS AND XUNCAS

60. CENTURY repeats and realleges each and every allegation contained in paragraphs "1" through "60" as if more fully set forth herein.

61. If CENTURY does owe coverage to PINNNALCE, XUNCAS and/or COLUBUS for any fees, costs or damages arising out of the Incident or the Underlying Action, such coverage would be excess to any other coverage available to PINNNALCE, XUNCAS and/or COLUBUS.

AS AND FOR A SEVENTH CAUSE OF ACTION
AGAINST COLUMBUS

62. CENTURY repeats and realleges each and every allegation contained in paragraphs "1" through "62" as if more fully set forth herein.

63. PINNACLE is the sole named insured on the PINNACLE Policy.

64. XUNCAS is the sole named insured on the XUNCAS Policy.

65. PINNACLE is the sole listed additional insured on the XUNCAS Policy.

66. Upon information and belief, there was no contract or agreement in place wherein PINNACLE agreed to provide or procure insurance for COLUMBUS.

67. Accordingly, in the absence of such an obligation, COLUMBUS does not qualify as an additional insured under the XUNCAS Policy or the PINNACLE Policy.

68. As COLUMBUS is not a named insured or additional insured under the XUNCAS Policy or the PINNACLE Policy, it is not entitled to coverage thereunder for the underlying claims or the Underlying Action.

69. GALVEZ is named as parties in this action so that complete relief may be secured in this action.

WHEREFORE, Plaintiff, CENTURY SURETY COMPANY, prays for judgment of this Court against the Defendants by way of a declaratory judgment to determine and declare the rights of the parties hereto, finding as follows:

1. That Plaintiff, CENTURY, is not obligated to defend or indemnify PINNACLE, XUNCAS and/or COLUMBUS for the claims brought against them in the Underlying Action under either the PINNACLE Policy or the XUNCAS Policy;

2. That defense counsel retained by CENTURY to defend PINNACLE be permitted to withdraw as counsel in the Underlying Action;

3. That defense counsel retained by CENTURY to defend XUNCAS be permitted to withdraw as counsel in the Underlying Action;

4. That CENTURY be reimbursed by PINNACLE for the costs and expenses incurred in defending PINNACLE in the Underlying Action; and

5. That CENTURY be reimbursed by XUNCAS for the costs and expenses incurred

in defending XUNCAS in the Underlying Action

6. If CENTURY does owe coverage to PINNNALCE, XUNCAS and/or COLUBUS for any fees, costs or damages arising out of the Incident or the Underlying Action, such coverage would be excess to any other coverage available to PINNNALCE, XUNCAS and/or COLUBUS.

7. Such other and further relief as to which this Court finds to be just and equitable together with the costs and disbursements of this action.

DATED: Melville, New York
May 5, 2017

HURWITZ & FINE, P.C.

/s/ Howard B. Altman
By______________________________
Howard B. Altman, Esq. (HA 6164)

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